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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ,

15 Defendants.
16

) Case No. CR - DMG

) **CRIMINAL MOTION AND TRIAL**
) **ORDER**

) Final Pretrial Conference:
) **, 2011 at 2:00 p.m.**

) Trial Date:
) **, 2011 at 8:30 a.m.**

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18 **A. MOTIONS**

19 1. Counsel must meet and confer with opposing counsel and attempt to resolve
20 the issue before filing a motion. Pretrial motions shall be filed on or before the Tuesday
21 four weeks before trial. Opposition (or notice of non-opposition) shall be filed no later
22 than one week after the filing of the motion. A reply, if any, shall be filed no later than
23 one week after the filing of the opposition. Replies relating to motions *in limine* are not
24 accepted absent leave of court. Counsel must follow the Central District's General
25 Orders and Local Rules concerning electronic filing, unless superseded by this Order.

26 2. Hearings on motions are held on **Wednesdays at 3:00 p.m.**, unless otherwise
27 set by the Court.
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1 3. All papers shall be served personally, electronically mailed, or faxed to
2 opposing counsel no later than 4:30 p.m. on the day of filing, with conformed Chambers
3 copies of documents delivered to the Court’s courtroom deputy clerk (“CRD”) at the
4 Spring Street courthouse. Paper Chambers copies are mandatory.

5 4. Counsel shall meet and confer with opposing counsel to informally resolve
6 discovery disputes prior to filing a motion for discovery. All discovery motions shall
7 state with particularity what is requested, the basis for the request, whether discovery has
8 been requested, and opposing counsel’s response to such request. Motions made without
9 prior consultation with opposing counsel may not be heard.

10 5. *Ex parte* applications are disfavored. Counsel should obtain the agreement
11 (or at least the position) of opposing counsel before filing such an application.

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13 **B. DISCOVERY & NOTICE**

14 Counsel shall comply promptly with discovery and notice pursuant to Rules 12,
15 12.1, 12.2, 12.3, 12.4, 15, and 16 of the Federal Rules of Criminal Procedure. On
16 government counsel’s discovery of any evidence within the scope of *Brady v. Maryland*,
17 373 U.S. 83 (1963), such evidence shall be produced forthwith to defense counsel.
18 Government counsel shall also disclose to defense counsel the existence or non-existence
19 of (1) evidence obtained by electronic surveillance and (2) testimony by a government
20 informant.

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22 **C. TRIAL REQUIREMENTS**

23 1. **No later than one week before trial**, government counsel shall file with the
24 Court a trial memorandum setting forth a factual summary of the government’s case, a
25 statement of the charges and the elements of each charge, an estimate of the length of the
26 government’s case in chief, including anticipated cross-examination, the names of
27 witnesses the government intends to call, and a discussion of relevant legal and
28 evidentiary issues as applied to the facts of the particular case. Government counsel shall

1 attempt to obtain defense counsel's agreement to the factual summary, statement of the
2 charges, time estimate for cross-examination of the government's witnesses (using the
3 attached sample "Joint Trial Witness Estimate" form), and legal and evidentiary issues.

4 2. Counsel shall arrive at the Courtroom no later than 8:30 a.m. on the first day
5 of trial.

6 3. Government counsel shall present the CRD with the following documents on
7 the first day of trial:

8 a. Three copies of the government's witness list, which shall also be sent
9 in Word or WordPerfect format to the Chambers e-mail box;

10 b. Three copies of the government's exhibit list in the form specified in
11 the attached sample, which shall also be sent in Word or WordPerfect format to the
12 Chambers e-mail box;

13 c. All of the government's exhibits, with official exhibit tags attached
14 and bearing the same number shown on the exhibit list. Exhibit tags may be obtained
15 from the receptionist in the Public Intake Section, located on the Main Street level of the
16 courthouse at 312 North Spring Street, Room G-19. Exhibits shall be numbered 1, 2, 3,
17 etc., NOT 1.1, 1.2, etc. If a "blow-up" is an enlargement of an existing exhibit, it shall be
18 designated with the number of the original exhibit followed by an "A";

19 d. A three-ring binder containing a copy of the indictment/information, a
20 copy of all exhibits that can be reproduced, and a copy of the witness list. Each exhibit
21 shall be tabbed with the exhibit number for easy referral;

22 e. A three-ring binder containing a copy of all exhibits for use by
23 witnesses.

24 4. Exhibits such as firearms, narcotics, etc., must remain in the custody of a
25 law enforcement agent during the pendency of the trial. It shall be the responsibility of
26 the agent to produce any such items for court, secure them at night, and guard them at all
27 times while in the courtroom.

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1 5. The Court prefers that defense counsel deliver defense exhibits to the CRD
2 on the first day of trial, but counsel are not required to do so unless these exhibits have
3 previously been provided to the government. Defense counsel are responsible for
4 affixing completed exhibit tags with the case name and case number to all exhibits to be
5 used in defendant's case.

6 6. In trials where the defense expects to admit more than 20 exhibits, defense
7 counsel shall provide two three-ring binders (one for the Court and one for witnesses),
8 tabbed if possible with numbers to correspond to the exhibits counsel expects to
9 introduce. Defense counsel shall provide the Court with a copy of defense exhibits as
10 they are introduced during trial, if they have not previously been provided.

11 7. Defense counsel shall provide the CRD and the court reporter with the
12 defense witness list and defense exhibit list.

13 8. A copy of the exhibit list with all **admitted exhibits** will be given to the jury
14 during deliberations. Government and defense counsel shall review and approve the
15 exhibit list with the CRD before the list is given to the jury.

16 9. If any counsel wishes to arrange for the use of additional equipment, such as
17 video monitors, overhead projectors, etc., counsel shall notify the CRD no later than 4:00
18 p.m. at least one week before trial so that the necessary arrangements may be made in
19 advance of trial.

20 10. Counsel shall not attempt to display or use any charts or enlargements of
21 exhibits unless all counsel have agreed to their use or objections have been heard and a
22 ruling has been made by the Court

23 11. On the day of jury selection, trial will begin at 9:00 a.m. Counsel will
24 appear at 8:30 a.m. Thereafter, trial days are Tuesday through Friday, 9:00 a.m. to 4:00
25 p.m., with two fifteen-minute breaks and a one-hour lunch break, unless otherwise
26 ordered by the Court. When necessary, trials may continue beyond the normal schedule.

27 12. On the day of jury selection, the Court reserves the time from 8:30 a.m. to
28 9:00 a.m. to handle legal and administrative matters. Jury selection will commence

1 promptly at 9:00 a.m. or as soon as jurors are available. All counsel must anticipate
2 matters that may need to be addressed outside of the presence of the jury and raise them
3 during this period, during breaks, or at the end of the day. The Court does not make
4 jurors wait while counsel discuss matters that should have been addressed previously.
5 Counsel are urged to consider any unusual substantive or evidentiary issues that may
6 arise and to advise the Court of such issues. Short briefs (no more than five pages)
7 addressing such disputed issues are welcome. The Court discourages sidebars during
8 trial.

9 13. Should government counsel wish to order transcripts, they shall provide
10 agency authorization to the court reporter at the time the request is made.

11 14. Any party requesting special court reporter services for any hearing (e.g.,
12 real time transmission, daily transcripts) shall notify the reporter at least two weeks
13 before the hearing date.

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15 **D. JURY INSTRUCTIONS, VERDICT FORMS & QUESTIONNAIRES**

16 1. **No later than one week before trial**, counsel shall submit both general and
17 substantive jury instructions in the form described below. If possible, all instructions
18 should be taken from the Manual of Model Criminal Jury Instructions for the Ninth
19 Circuit (West Publishing, current edition). Where no applicable Ninth Circuit model
20 instruction is available, counsel should consult the instructions from O'Malley, Grenig &
21 Lee (formerly Devitt, et al.), Federal Jury Practice and Instructions (West Publishing Co.,
22 current edition). Counsel may submit alternatives to the Ninth Circuit model jury
23 instructions or O'Malley, Grenig & Lee instructions only if counsel has a reasoned
24 argument that those instructions do not properly state the law or they are incomplete.

25 2. The parties must submit JOINT jury instructions and a JOINT proposed
26 verdict form. In order to produce these joint instructions, the parties shall meet and
27 confer sufficiently in advance of the required submission date with the goal of agreeing
28 on instructions and verdict forms. Where the parties cannot agree, disputed instructions

1 shall be submitted at least one week before trial as follows: (1) JOINT jury instructions
2 (those instructions agreed to by all parties), and (2) DISPUTED jury instructions (those
3 instructions propounded by a party to which another party objects). On a separate page
4 following each disputed jury instruction, the party opposing the instruction shall briefly
5 state the basis for the objection, any authority in support thereof and, if applicable, an
6 alternative instruction. On the following page, the party proposing the disputed
7 instruction shall briefly state its response to the objection, and any authority in support of
8 the instruction. Each requested jury instruction shall be numbered and set forth in full on
9 a separate page, citing the authority or source of the requested instruction.

10 3. Jury instructions should be modified as necessary to fit the facts of the case
11 (*e.g.*, inserting names of defendant(s) or witness(es) to whom instruction applies). Where
12 language appears in brackets in the model instruction, counsel shall select the appropriate
13 text and eliminate the inapplicable bracketed text.

14 4. An index page shall accompany all jury instructions submitted to the Court.
15 The index page shall indicate the following:

- 16 a. The number of the instruction;
- 17 b. A brief title of the instruction;
- 18 c. The source of the instruction; and
- 19 d. The page number of the instruction.

20 **EXAMPLE:**

21 <u>Number</u>	22 <u>Title</u>	23 <u>Source</u>	24 <u>Page Number</u>
25 #1	26 Conspiracy-Elements	27 9th Cir. 8.5.1	28 1

23 5. One or more copies of the instructions will be given to the jury during
24 deliberations. Accordingly, counsel must submit to the Chambers e-mail
25 (dmg_chambers@cacd.uscourts.gov) a “clean” set of all instructions in Word or
26 WordPerfect format, containing only the text of each instruction, set forth in full on each
27 page, with the caption “Instruction No. ____” (eliminating titles, supporting authority,
28 indication of party proposing, etc.). A paper Chambers copy must also be submitted.

1 6. Counsel shall submit a joint proposed verdict form with the jury instructions.

2 7. At least one week before trial, each counsel must file any proposed questions
3 to be asked of prospective jurors.

4 8. The Court, in its discretion, may display certain *voir dire* questions and
5 general jury instructions on the large screen inside the courtroom.

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7 **E. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL**

8 1. Counsel shall not refer to any witness – including a client – over 14 years of
9 age by his/her first name during trial.

10 2. Counsel shall not discuss the law or argue the case in opening statements.

11 3. No “speaking objections” are allowed. Counsel shall not use objections for
12 the purpose of making a speech, repeating testimony, or attempting to guide the witness.
13 When objecting, counsel shall stand, state only the legal ground of the objection, *e.g.*,
14 hearsay, irrelevant, etc. Counsel shall not argue an objection before the jury. Requests to
15 approach sidebar to further argue an objection should be made sparingly and may not be
16 granted.

17 4. Counsel shall not make facial expressions, nod, or shake their heads,
18 comment, or otherwise exhibit in any way any agreement, disagreement, or other opinion
19 or belief concerning the testimony of a witness. Counsel shall admonish their clients and
20 witnesses not to engage in such conduct.

21 5. Counsel should not talk to jurors at all, and should not talk to co-counsel,
22 opposing counsel, witnesses, or clients where the conversation can be overheard by
23 jurors. Each counsel should admonish counsel’s own clients and witnesses to avoid such
24 conduct.

25 6. Counsel shall question witnesses from the lectern. Counsel shall not
26 approach the witness box or enter the well without the Court’s permission, and shall
27 return to the lectern when counsel’s purpose has been accomplished.

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1 7. Counsel should speak clearly when questioning witnesses, making
2 objections, etc.

3 8. No document shall be placed before a witness unless a copy has been
4 provided to the Court and opposing counsel. Counsel may consider such devices as
5 overhead projectors, jury notebooks for admitted exhibits, or enlargements of important
6 exhibits. The Court has an Elmo and other equipment available for use during trial.
7 Counsel may call the CRD if they wish to visit when the Court is not in session to
8 practice using the equipment. The Court does not permit exhibits to be “published” by
9 passing them up and down the jury box. Exhibits may be displayed briefly using the
10 screen in the courtroom, unless the process becomes too time-consuming.

11 9. Water is permitted in the courtroom. Food is not permitted in the courtroom.

12 10. Counsel shall rise when addressing the Court, including when objecting to
13 opposing counsel’s questions. In jury trials, counsel, designated case agents and the
14 defendant shall rise when the jury enters or leaves the courtroom. Special procedures or
15 exceptions may apply when the defendant is in custody or restrained.

16 11. In trial, all remarks shall be addressed to the Court. Counsel shall not
17 directly address the CRD, the court reporter, or opposing counsel. All requests for re-
18 reading of questions or answers, or to have an exhibit placed in front of a witness, shall
19 be addressed to the Court

20 12. Counsel should not offer a stipulation without having conferred with
21 opposing counsel and having reached an agreement. Any stipulation of fact will require
22 defendant’s personal concurrence and shall be submitted to the Court in writing for
23 approval. A proposed stipulation should be explained to defendant in advance.

24 13. While court is in session, counsel shall not leave counsel table to confer with
25 investigators, paralegals, secretaries, witnesses, etc. unless permission is granted in
26 advance.

